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Secrecy of Doctor-Patient Relationship Might Not Prove so Sacred in Court

"WHATEVER, in connection with my professional practice, or not in connection with it, I see or hear in the life of men, which ought not to be spoken abroad, I will not divulge, as reckoning that all such should be kept secret."

This familiar excerpt from the Hippocratic Oath is one of the ethical axioms of the medical profession, deeply respected and defended by its reputable practitioners.

Unfortunately, like the Declaration of Independence, the Hippocratic Oath has no standing whatever in law. Many laymen and even some physicians may be quite surprised, as I was, to discover that the very concept of privileged communication between doctor and patient is often attacked in the courts and has a precarious and variable place in the laws of the different states.

Some eminent legal writers who go to great lengths to defend the privacy of lawyer-client communications have no hesitation in attacking the duty of a physician to remain silent in court as an impediment to justice.

According to the textbook, "Doctor and Patient and the Law" by C. J. Steller and Dr. A. R. Moritz, the English common law was silent on medical privilege until 1776, when the court ruled on a surgeon's testimony in the bigamy trial of the Duchess of Kingston. It held that, "If a surgeon was voluntarily to reveal these secrets, to be sure he would be guilty of a breach of honor, and of great indiscretion; but to give that information to a court of justice, which by the law of the land he is bound to do, will never be imputed to him as any indiscretion whatever."

MANY STATES have enacted specific laws to define the scope of the medical privilege, and the present

situation is too confusing to summarize quickly—except to caution patients everywhere that the law in their community may be less respectful of the privacy of communications to their physicians than they might have supposed.

My further remarks concern the State of California, which has adopted a reasonably advanced position in protecting patients' privacy, if we compare it with the rest of the nation.

The law in California for example, does recognize the medical privilege—but then erodes it with many exceptions. These include all criminal cases and civil cases for damages for illegal acts of the defendant. (With many blue laws still in the books, the potential scope of this is immense.) Less surprisingly, a patient cannot claim medical privilege covering his own claims in personal injury suits against others.

Within the last few years, the law has recognized the special need to protect personal confidence in the field of psychotherapy. An eminent Chicago psychiatrist refused to testify about his patient, who was a correspondent in a civil suit for "alienation-of-affection," and thus brought this matter to public and judicial notice in 1952. It set new precedents in case law in Illinois.

Since 1952, many states have gradually adopted a special privilege for the communications of patients with professional psychiatrists and psychologists. That these privileges are much stricter than for general medical practice is, in one sense, an advance; but it makes no sense to deny a gynecologist privilege on the same information that would be respected for a psychiatrist.

PSYCHIATRISTS still face a practical and ethical

dilemma in complying with the law that withdraws the privilege when a patient is so disturbed as to be dangerous to himself or others.

The greatest difficulties arise when a citizen consults a physician or psychiatrist outside the framework of the traditional patient-doctor relationship, for example in industrial employment, schools, and other institutions. It may be quite unclear "whom the doctor is working for."

This concern is broadened by appeals to the medical profession to fulfill other politically oriented functions. For example, J. Edgar Hoover, in an editorial in the Journal of the American Medical Association in 1950, appealed to physicians to report to the FBI about any facts that might come into their possession about espionage, sabotage and subversive activities.

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Physicians should have no absolute privileges, any more than lawyers or priests. However, they profess to heal the sick as their first obligation. In order not to betray the confidence of their patients, and to sustain it for the needs of the profession and of humanity, the ground rules should be clearly laid out and understood by patient and physician alike.

Any doctor who expects that the law or his employment will interfere with fulfilling an oath of confidence should be sure that his patient understands this before hearing or seeing anything "which ought not to be spoken abroad." And the law should not put him in an impossible position in fulfilling his oath.

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